

MONTANA LEGISLATIVE HISTORY

Chapter 405 19 77

Bill H 422 S _____ Original bill & history ____C

H. Committee on Taxation

Hearing Date(s) Feb 01 ☒ C

Feb 02 ☒ C

_____ ☐ C

_____ ☐ C

Date Out _____ ☐ C

S. Committee on Taxation

Hearing Date(s) Mar 17 ☒ C

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

1
2 INTRODUCED BY H BILL NO. 422 Mark
Ramsey John Zeig

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCORPORATE THE
5 FEDERAL CHANGES OF SUBCHAPTER 5 CORPORATIONS CONTAINED IN
6 THE TAX REFORM ACT OF 1976; AMENDING SECTIONS 84-1501.1 and
7 84-1501.2, R.C.M. 1947."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 84-1501.1, R.C.M. 1947, is amended
11 to read as follows:

12 "84-1501.1. Definitions. (a) Small business
13 corporation. For purposes of this act, the term "small
14 business corporation" means a corporation doing business in
15 Montana, and which does not--

16 (1) have more than ten (10) shareholders;
17 (2) have as a shareholder a person (other than an
18 estate and other than a trust described in subsection e) who
19 is not an individual;

20 (3) have a nonresident alien as a shareholder; and

21 (4) have more than one class of stock.

22 (b) Electing small business corporation. For purposes
23 of this act, the term "electing small business corporation"
24 means, with respect to any taxable year, a small business
25 corporation which has made an election under this act, in

1 effect for such taxable year.

2 (c) Stock owned by husband and wife. For purposes of
3 subsection (a)(1), stock which:

4 (1) is community property of a husband and wife for
5 the income from which is community income) under the
6 applicable community property law of a state;

7 (2) is held by a husband and wife as joint tenants,
8 tenants by the entirety, or tenants in common;

9 (3) was, on the date of death of a spouse, stock
10 described in subsection (c)(1) or (c)(2) and is, by reason
11 of such death, held by the estate of the deceased spouse and
12 the surviving spouse or by the estates of both spouses (by
13 reason of their deaths on the same date), in the same
14 proportion as held by the spouses before such death; or

15 (4) was, on the date of the death of a surviving
16 spouse, stock described in subsection (c)(3) and is, by
17 reason of such death, held by the estates of both spouses in
18 the same proportion as held by the spouses before their
19 deaths shall be treated as owned by one shareholder.

20 (d) Special shareholder rules.

21 (1) A small business corporation which has been an
22 electing small business corporation for a period of 5
23 consecutive taxable years may not have more than 15
24 shareholders.

25 (2) If, during the 5-year period set forth in

INTRODUCED BILL

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3 422

subsection (d)(1), the number of shareholders of an electing small business corporation would increase to an amount in excess of 10 (but not in excess of 15) solely by reason of additional shareholders who acquired their stock through inheritance; the corporation may have a number of additional shareholders equal to the number by which the inheriting shareholders cause the total number of shareholders of such corporation to exceed 10.

(e) Certain trusts permitted as shareholders. For purposes of subsection (a), the following trusts may be shareholders:

(1) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code;

(2) a trust created primarily to exercise the voting power of stock transferred to it;

(3) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it. In the case of a trust described in subsection (e)(2), each beneficiary of the trust shall, for purposes of subsection (a)(1), be treated as a shareholder."

Section 2. Section 84-1501-2, R.C.M. 1947, is amended to read as follows:

"84-1501-2. Election by small business corporation.

(a) Eligibility. Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation--

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day, consent to such election.

(b) Effect. If a small business corporation makes an election under subsection (a), then--

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to

1 such shareholder.

2 (c) Where and how made.

3 (1) In general. An election under subsection (a) may
4 be made by a small business corporation for any taxable year
5 at any time during the first month of such taxable year, or
6 at any time during the month preceding such first month.
7 Such election shall be made in such manner as the department
8 of revenue shall prescribe by regulations.

9 (2) Taxable years beginning before date of enactment.
10 An election may be made under subsection (a) by a small
11 business corporation for its first taxable year which begins
12 after December 31, 1958, and on or before the date of the
13 enactment of this subchapter, and ends after such date at
14 any time--

15 (A) within the 90-day period beginning on the day
16 after the date of the enactment of this subchapter, or

17 (B) if its taxable year ends within such 90-day
18 period, before the close of such taxable year.

19 An election may be made pursuant to this paragraph only
20 if the small business corporation has been a small business
21 corporation (as defined in this act) on each day after the
22 date of the enactment of this subchapter and before the day
23 of such election.

24 (d) Years for which effective. An election under
25 subsection (a) shall be effective for the taxable year of

1 the corporation for which it is made and for all succeeding
2 taxable years of the corporation, unless it is terminated,
3 with respect to any such taxable year, under subsection (e).

4 (e) Termination.

5 (1) New shareholders. An election under subsection (a)
6 made by a small business corporation shall terminate if any
7 person who was not a shareholder in such corporation--

8 (A) on the first day of the first taxable year of the
9 corporation for which the election is effective, if such
10 election is made on or before such first day, or

11 (B) on the day on which the election is made, if such
12 election is made after such first day, becomes a shareholder
13 in such corporation and ~~does not consent to such election~~
14 ~~within such time as the state department of revenue shall~~
15 ~~prescribe by regulations. Such termination shall be~~
16 ~~effective for the taxable year of the corporation in which~~
17 ~~such person becomes a shareholder in the corporation and for~~
18 ~~all succeeding taxable years of the corporation~~
19 affirmatively refuses (in such manner as the department of
20 revenue shall by rules prescribe) to consent to such
21 election on or before the 60th day on which he acquires the
22 stock.

23 (2) If the person acquiring the stock is the estate of
24 a decedent, the period under subsection (a)(1) for
25 affirmatively refusing to consent to the election shall

expire on the 60th day after whichever of the following is the earlier:

(A) the day on which the executor or administrator of the estate qualifies; or

(B) the last day of the taxable year of the corporation in which the decedent died.

(3) Any termination of an election under subsection (e)(1) by reason of the affirmative refusal of any person to consent to such election shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

~~(2)(4)~~ Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective--

(A) for the taxable year in which made, if made before the close of the first month of such taxable year.

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such

revocation shall be made in such manner as the state department of revenue shall prescribe by regulations.

~~(3)(5)~~ Ceases to be small business corporation. An election under subsection (a) made by a small business corporation shall terminate if at any time--

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day, the corporation ceases to be a small business corporation (as defined in this act). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the state department of revenue consents to such election.

(g) This election shall not be effective unless the

1 corporate net income or loss of such electing corporation
2 shall have been included in the stockholders' adjusted gross
3 income as such is defined in section 84-4905.

4 (h) Every electing corporation shall be required to
5 pay the minimum fee of ten dollars (\$10.00) required by
6 section 84-1501."

7 Section 3. Application. The amendments made in
8 sections 1 and 2 apply to taxable years beginning after
9 December 31, 1976.

-End-

STATE OF MONTANA

REQUEST NO. 218-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 77, there is hereby submitted a Fiscal Note for House Bill 422 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

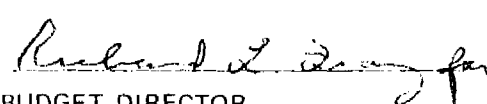
DESCRIPTION OF PROPOSED LEGISLATION

This bill incorporates the Federal changes of Subchapter S corporations contained in the tax reform act of 1976.

ASSUMPTIONS

It appears that the proposed legislation would have little effect on state revenue although it is impossible to estimate how many more corporations might qualify as small business corporations under the extended definition of shareholder. (There are currently 2700 small business corporations operating in Montana.) In any event this bill should not effect overall state tax revenues appreciably -- any losses in corporation license tax collections which might occur because additional corporations would qualify as small business corporations if this bill were enacted would be at least partially offset by increases in individual income tax collections (since small business corporations are taxed through the individual income tax system rather than the corporation license tax system).

PREPARED BY DEPARTMENT OF REVENUE


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-1-77

Chairman Mathers called for other proponents or opponents of the bill and a discussion followed with questions from the committee and amendments proposed.

Sen. Turnage moved that Mr. Tippy draft an amendment that will specify that these are to be secondary loans and securities and would have to originate in the state. His motion was seconded by Sen. Watt.

Following further discussion, the hearing on HB73 closed.

CONSIDERATION OF HOUSE BILL 422: Rep. Ramirez also presented this bill which he said pertains to small corporations, qualifying under subchapter S, and the bill simply adopts the changes of the tax reform act of 1976 to bring the state law into conformity with the Federal. Mr. Dore said the D.R. supports the bill also.

DISPOSITION: Sen. Turnage Moved HB422 Be Concurred In. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 583: Rep. Ramirez said this bill clarifies when the state corporation license tax accrues for Federal tax purposes. He said there is a problem with corporations who use the fiscal year. He distributed Exh. #1, and said the law did not state what year the company should pay the tax. Therefore, if they had a particularly good year they would want to pay the tax in that year, rather than the following year, should it be a poorer one. Several amendments were suggested for the bill and Sen. Turnage moved the addition of the word "taxable" in 2 places in the bill, on page 2, line 10, following "for the" and on page 1, line 24, following the word "preceding".

Sen. Turnage Moved the Adoption of these Amendments and the motion carried.

DISPOSITION: Sen. Turnage then Moved HB583 As Amended Be Concurred In. This motion also carried unanimously.

The committee then looked at bills heard previously, first taking up HB551. They discussed this bill again and consulted with Mr. Burr concerning the D.R.'s stand on the legislation. He said the D.R. was satisfied with the bill.

Sen. Towe then Moved to Amend the Bill as shown on the committee report attached. His motion carried unanimously.

DISPOSITION: Sen. Towe Moved HB551 As Amended Be Concurred In. This motion carried unanimously.

The committee then discussed HB155 and agreed to act upon it.

DISPOSITION: Sen. Turnage Moved HB155 Be Not Concurred In. Motion carried with "No" votes by Sens. Healy, Watt, Norman.

Following disposition of this bill, the meeting adjourned.

22 - February 1, 1977

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Rep. Meloy said if the committee can come up with some way of restoring the tax base that was lowered last session, he would be glad to do something about it.

Rep. Jack Ramirez, District #64, Yellowstone County, chief sponsor of HB 422, said this act concerns Subchapter S corporations, and this would bring Montana into compliance with the federal Tax Reform Act of 1976 by defining under what circumstances stock owned by spouses may be treated as though owned by one shareholder; by defining the type of trusts which may be counted as a shareholder; and by requiring that new shareholders reaffirm their election of the small business corporation option.

HOUSE BILL
422

Ray Dore, DOR, supports HB 422. He offers amendments on page 2, line 3, following "stock", strike "which" and insert "shall be treated as owned by one shareholder when it"; and on line 19, following "deaths", strike "shall be treated as owned by one shareholder".

Senator Carroll Graham, District #29, Big Horn County, sponsored SB 9. Dave Cogley explained this act which deals with the laws relating to gambling. It is intended to clean up some of the language in the gambling laws. This bill deserves some close scrutiny. It intends to clarify what a gambling game is. It is a recodification bill clarifying and reorganizing the state gambling laws. A summary is attached which explains the changes that were made.

SENATE BILL
9

There were no opponents.

The district court will have the authority over prosecution of card games gambling violations, and the city police and county attorney would enforce these laws.

Rep. W. Jay Fabrega, District #44, Cascade County, chief sponsor of HB 576, explained this bill amends the initiative "State Funded Homestead Tax Relief Act" requiring that the department of revenue calculate the rebate to each homeowner and issue a warrant to him upon receipt of the homeowner's application. Changes required to handle the Homestead Tax Refund Act would entail much additional work and equipment. DOR would mail 2 copies to the taxpayer, one for the DOR; the notice of tax relief and form necessary to be filled out and returned in order to receive the tax relief payment. This can be returned with the tax payment.

HOUSE BILL
576

Margaret Temple, President of the County Treasurers Association, supports HB 576. She said the owner would not have to declare this refund as an income unless he takes it as a deduction on his income tax bill. See her testimony.

May Jenkins, Montana Treasurers Association, Yellowstone County, said HB 141 was a nightmare. HB 576 would prove a very simple form and since this is a state refund, she doesn't think the county should be saddled with the job of the refunding process. See her testimony attached.

23 - February 2, 1977

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HB 340 as per attached amendments. After much discussion on "public lands" the motion carried unanimously. The original motion was changed to HB 340 AS AMENDED DO PASS. Motion carried with Rep. Underdal voting No.

HOUSE BILL 168 - Rep. Fabrega asked for reconsideration of the committee's action on HB 168, and that it be given a DO PASS. He made a motion to add amendments; this motion failed 5-7. Rep. Williams made a substitute motion to recommend HB 168 DO NOT PASS. Motion failed 6-7. So original motion of HB 168 DO PASS recommendation was adopted 7-6.

HOUSE BILL 362 - Rep. Fabrega moved that HB 362 DO PASS. He further moved to amend HB 362. Reps. Uhde and Huennekens voted No. Motion carried. Rep. Fabrega then moved that HB 362 AS AMENDED DO PASS. Motion failed 7-7. Rep. Sivertsen moved to recommend HB 362 DO NOT PASS. Motion failed 6-8. The committee will vote later.

HOUSE BILL 422 - Rep. Fabrega moved to recommend HB 422 DO PASS. He further moved to recommend HB 422 be amended according to proposed amendments. These amendments were unanimously adopted. Rep. Fabrega further moved that "shall be treated as owned by one shareholder" be stricken. Motion was unanimously adopted. He further moved to recommend that HB 422 AS AMENDED DO PASS. This motion was adopted unanimously by 13 members present.

HOUSE BILL 469 - Rep. Bertelsen moved to recommend HB 469 DO NOT PASS. This motion was unanimously adopted.

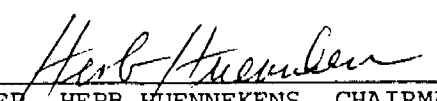
HOUSE BILL 507 - Rep. Fabrega moved to recommend HB 507 DO NOT PASS. Motion carried with Rep. Dassinger voting No. Rep. Dassinger had moved an amendment to have the date changed to "February 5, 1979", but this motion failed.

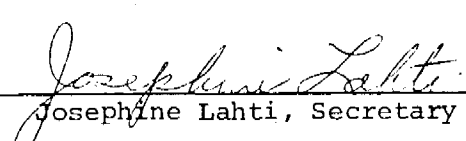
Rep. Dassinger took over chairmanship of the committee.

HOUSE BILL 474 - Rep. Huennekens moved that HB 474 DO PASS. Rep. Fabrega made a substitute motion that HB 474 DO NOT PASS. Motion carried with Rep. Williams voting No.

SENATE BILL 9 - Rep. Bertelsen moved that SB 9 BE CONCURRED IN. Motion carried unanimously.

Meeting adjourned at 11:45 a.m.


REP. HERB HUENNEKENS, CHAIRMAN


Josephine Lahti, Secretary

HOUSE BILL NO. 422

INTRODUCED BY RAMIREZ, PORTER, MOORE, FABREGA, MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCORPORATE THE
FEDERAL CHANGES OF SUBCHAPTER S CORPORATIONS AND CORPORATION
LOSS CARRYOVERS CONTAINED IN THE TAX REFORM ACT OF 1976;
AMENDING SECTIONS 84-1501.1, AND 84-1501.2, AND 84-1502,
R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 84-1501.1, R.C.M. 1947, is amended
to read as follows:

"84-1501.1. Definitions. (a) Small business
corporation. For purposes of this act, the term "small
business corporation" means a corporation doing business in
Montana, and which does not--

(1) have more than ten (10) shareholders;

(2) have as a shareholder a person (other than an
estate and other than a trust described in subsection (e)
who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

(b) Electing small business corporation. For purposes
of this act, the term "electing small business corporation"
means, with respect to any taxable year, a small business

corporation which has made an election under this act, in
effect for such taxable year.

(c) Stock owned by husband and wife. For purposes of
subsection (a)(1), stock which SHALL BE TREATED AS OWNED BY
ONE SHAREHOLDER WHEN IT:

(1) is community property of a husband and wife (or
the income from which is community income) under the
applicable community property law of a state;

(2) is held by a husband and wife as joint tenants,
tenants by the entirety, or tenants in common;

(3) was, on the date of death of a spouse, stock
described in subsection (c)(1) or (c)(2) and is, by reason
of such death, held by the estate of the deceased spouse and
the surviving spouse or by the estates of both spouses (by
reason of their deaths on the same date), in the same
proportion as held by the spouses before such death; or

(4) was, on the date of the death of a surviving
spouse, stock described in subsection (c)(3) and is, by
reason of such death, held by the estates of both spouses in
the same proportion as held by the spouses before their
deaths shall-be-treated-as-owned-by-one-shareholder.

(d) Special shareholder rules.

(1) A small business corporation which has been an
electing small business corporation for a period of 5
consecutive taxable years may not have more than 15

REFERENCE BILL

shareholders.

~~(2) If, during the 5-year period set forth in subsection (d)(1), the number of shareholders of an electing small business corporation would increase to an amount in excess of 10 (but not in excess of 15) solely by reason of additional shareholders who acquired their stock through inheritance, the corporation may have a number of additional shareholders equal to the number by which the inheriting shareholders cause the total number of shareholders of such corporation to exceed 10.~~

~~(e) Certain trusts permitted as shareholders. For purposes of subsection (a), the following trusts may be shareholders:~~

~~(1) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code;~~

~~(2) a trust created primarily to exercise the voting power of stock transferred to it;~~

~~(3) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it. In the case of a trust described in subsection (e)(2), each beneficiary of the trust shall, for purposes of subsection (a)(1), be treated as a shareholder."~~

Section 2. Section 84-1501.2, P.C.M. 1947, is amended

to read as follows:

"84-1501.2. Election by small business corporation.

(a) Eligibility. Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation--

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day, consent to such election.

(b) Effect. If a small business corporation makes an election under subsection (a), then--

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder,

1 and with respect to such taxable years and all succeeding
2 taxable years, the provisions of this act shall apply to
3 such shareholder.

4 (c) Where and how made.

5 (1) In general. An election under subsection (a) may
6 be made by a small business corporation for any taxable year
7 at any time during the first month of such taxable year, or
8 at any time during the month preceding such first month.
9 Such election shall be made in such manner as the department
10 of revenue shall prescribe by regulations.

11 (2) Taxable years beginning before date of enactment.
12 An election may be made under subsection (a) by a small
13 business corporation for its first taxable year which begins
14 after December 31, 1958, and on or before the date of the
15 enactment of this subchapter, and ends after such date at
16 any time--

17 (A) within the 90-day period beginning on the day
18 after the date of the enactment of this subchapter, or

19 (B) if its taxable year ends within such 90-day
20 period, before the close of such taxable year.

21 An election may be made pursuant to this paragraph only
22 if the small business corporation has been a small business
23 corporation (as defined in this act) on each day after the
24 date of the enactment of this subchapter and before the day
25 of such election.

1 (d) Years for which effective. An election under
2 subsection (a) shall be effective for the taxable year of
3 the corporation for which it is made and for all succeeding
4 taxable years of the corporation, unless it is terminated,
5 with respect to any such taxable year, under subsection (e).

6 (e) Termination.

7 (1) New shareholders. An election under subsection (a)
8 made by a small business corporation shall terminate if any
9 person who was not a shareholder in such corporation--

10 (A) on the first day of the first taxable year of the
11 corporation for which the election is effective, if such
12 election is made on or before such first day, or

13 (B) on the day on which the election is made, if such
14 election is made after such first day, becomes a shareholder
15 in such corporation and ~~does not consent to such election~~
16 ~~within such time as the state department of revenue shall~~
17 ~~prescribe by regulations. Such termination shall be~~
18 ~~effective for the taxable year of the corporation in which~~
19 ~~such person becomes a shareholder in the corporation and for~~
20 ~~all succeeding taxable years of the corporation~~
21 affirmatively refuses (in such manner as the department of
22 revenue shall by rules prescribe) to consent to such
23 election on or before the 60th day on which he acquires the
24 stock.

25 (2) If the person acquiring the stock is the estate of

1 a decedent, the period under subsection (e)(1) for
 2 affirmatively refusing to consent to the election shall
 3 expire on the 60th day after whichever of the following is
 4 the earlier:

5 (A) the day on which the executor or administrator of
 6 the estate qualifies; or

7 (B) the last day of the taxable year of the
 8 corporation in which the decedent died.

9 (3) Any termination of an election under subsection
 10 (e)(1) by reason of the affirmative refusal of any person to
 11 consent to such election shall be effective for the taxable
 12 year of the corporation in which such person becomes a
 13 shareholder in the corporation and for all succeeding
 14 taxable years of the corporation.

15 (2)(4) Revocation. An election under subsection (a)
 16 made by a small business corporation may be revoked by it
 17 for any taxable year of the corporation after the first
 18 taxable year for which the election is effective. An
 19 election may be revoked only if all persons who are
 20 shareholders in the corporation on the day on which the
 21 revocation is made consent to the revocation. A revocation
 22 under this paragraph shall be effective--

23 (A) for the taxable year in which made, if made before
 24 the close of the first month of such taxable year.

25 (B) for the taxable year following the taxable year in

1 which made, if made after the close of such first month, and
 2 for all succeeding taxable years of the corporation. Such
 3 revocation shall be made in such manner as the state
 4 department of revenue shall prescribe by regulations.

5 ~~(3)(5)~~ Ceases to be small business corporation. An
 6 election under subsection (a) made by a small business
 7 corporation shall terminate if at any time--

8 (A) after the first day of the first taxable year of
 9 the corporation for which the election is effective, if such
 10 election is made on or before such first day, or

11 (B) after the day on which the election is made, if
 12 such election is made after such first day, the corporation
 13 ceases to be a small business corporation (as defined in
 14 this act). Such termination shall be effective for the
 15 taxable year of the corporation in which the corporation
 16 ceases to be a small business corporation and for all
 17 succeeding taxable years of the corporation.

18 (f) Election after termination. If a small business
 19 corporation has made an election under subsection (a) and if
 20 such election has been terminated or revoked under
 21 subsection (e), such corporation (and any successor
 22 corporation) shall not be eligible to make an election under
 23 subsection (a) for any taxable year prior to its fifth
 24 taxable year which begins after the first taxable year for
 25 which such termination or revocation is effective, unless

1 the state department of revenue consents to such election.

2 (g) This election shall not be effective unless the
3 corporate net income or loss of such electing corporation
4 shall have been included in the stockholders' adjusted gross
5 income as such is defined in section 84-4905.

6 (h) Every electing corporation shall be required to
7 pay the minimum fee of ten dollars (\$10.00) required by
8 section 84-1501."

9 SECTION 3. SECTION 84-1502, R.C.M. 1947, IS AMENDED TO
10 READ AS FOLLOWS:

11 "84-1502. Deductions allowed in computing income. In
12 computing the net income the following deductions shall be
13 allowed from the gross income received by such corporation
14 within the year from all sources:

15 1. All the ordinary and necessary expenses paid or
16 incurred during the taxable year in the maintenance and
17 operation of its business and properties, including
18 reasonable allowance for salaries for personal services
19 actually rendered, subject to the limitation hereinafter
20 contained, rentals or other payments required to be made as
21 a condition to the continued use or possession of property
22 to which the corporation has not taken or is not taking
23 title, or in which it has no equity. No deduction shall be
24 allowed for salaries paid upon which the recipient thereof
25 has not paid Montana state income tax; provided, however,

1 that where domestic corporations are taxed on income derived
2 from without the state, salaries of officers paid in
3 connection with securing such income shall be deductible.

4 2. (A) All losses actually sustained and charged off
5 within the year and not compensated by insurance or
6 otherwise, including a reasonable allowance for the wear and
7 tear and obsolescence of property used in the trade or
8 business, such allowance to be determined according to the
9 provisions of section 167 of the internal revenue code in
10 effect with respect to the taxable year. All elections for
11 depreciation shall be the same as the elections made for
12 federal income tax purposes. No deduction shall be allowed
13 for any amount paid out for any buildings, permanent
14 improvements or betterments made to increase the value of
15 any property or estate and no deduction shall be made for
16 any amount of expense of restoring property or making good
17 the exhaustion thereof for which an allowance is or has been
18 made.

19 (B) (a) There shall be allowed as a deduction for the
20 taxable period a net operating loss deduction determined
21 according to the provisions of this subsection. The net
22 operating loss deduction is the aggregate of net operating
23 loss carryovers to such taxable period plus the net
24 operating loss carrybacks to such taxable period. The term
25 "net operating loss" means the excess of the deductions

1 allowed by this section, 84-1502, over the gross income,
 2 with the modifications specified in paragraph (b) of this
 3 subsection. If for any taxable period beginning after
 4 December 31, 1970, a net operating loss is sustained, such
 5 loss shall be a net operating loss carryback to each of the
 6 three {3} taxable periods preceding the taxable period of
 7 such loss and shall be a net operating loss carryover to
 8 each of the five {5} taxable periods following the taxable
 9 period of such loss. A net operating loss for any taxable
 10 period ending after December 31, 1975, in addition to being
 11 a net operating loss carryback to each of the three
 12 preceding taxable periods, shall be a net operating loss
 13 carryover to each of the seven taxable periods following the
 14 taxable period of such loss. The portion of such loss which
 15 shall be carried to each of the other taxable years shall be
 16 the excess, if any, of the amount of such loss over the sum
 17 of the net income for each of the prior taxable periods to
 18 which such loss was carried. For purposes of the preceding
 19 sentence, the net income for such prior taxable period shall
 20 be computed with the modifications specified in paragraph
 21 (b)(ii) of this subsection and by determining the amount of
 22 the net operating loss deduction without regard to the net
 23 operating loss for the loss period or any taxable period
 24 thereafter, and the net income so computed shall not be
 25 considered to be less than zero.

1 (b) The modifications referred to in paragraph (a) of
 2 this subsection shall be as follows:
 3 (i) No net operating loss deduction shall be allowed.
 4 (ii) The deduction for depletion shall not exceed the
 5 amount which would be allowable if computed under the cost
 6 method.
 7 (c) A net operating loss deduction shall be allowed
 8 only with regard to losses attributable to the business
 9 carried on within the state of Montana.
 10 (d) In the case of a merger of corporations, the
 11 surviving corporation shall not be allowed a net operating
 12 loss deduction for net operating losses sustained by the
 13 merged corporations prior to the date of merger.
 14 In the case of a consolidation of corporations, the new
 15 corporate entity shall not be allowed a deduction for net
 16 operating losses sustained by the consolidated corporations
 17 prior to the date of consolidation.
 18 (e) Notwithstanding the provisions of section
 19 84-1508.1 (c), R.C.M., 1947, interest shall not be paid with
 20 respect to a refund of tax resulting from a net operating
 21 loss carryback or carryover.
 22 (f) The net operating loss deduction shall not be
 23 allowed with respect to taxable periods which ended on or
 24 before December 31, 1970, but shall be allowed only with
 25 respect to taxable periods beginning on or after January 1,

1 1971.

2 3. In the case of mines, other natural deposits, oil
3 and gas wells, and timber, a reasonable allowance for
4 depletion and for depreciation of improvements, such
5 reasonable allowance to be determined according to the
6 provisions of the internal revenue code in effect for the
7 taxable year. All elections made under the internal revenue
8 code with respect to capitalizing or expensing exploration
9 and development costs and intangible drilling expenses for
10 corporation license tax purposes shall be the same as the
11 elections made for federal income tax purposes.

12 4. The amount of interest paid within the year on its
13 indebtedness incurred in the operation of the business from
14 which its income is derived; but no interest shall be
15 allowed as a deduction if paid on an indebtedness created
16 for the purchase, maintenance or improvement of property or
17 for the conduct of business unless the income from such
18 property or business would be taxable under this act.

19 5. Interest income from obligations of the state of
20 Montana, or any political subdivision or municipality of the
21 state of Montana.

22 6. Taxes paid within the year except the following:

23 (a) Taxes imposed by this act.

24 (b) Taxes assessed against local benefits of a kind
25 tending to increase the value of the property assessed.

1 (c) Taxes on or according to or measured by net income
2 or profits imposed by authority of the government of the
3 United States.

4 (d) Taxes imposed by any other state or country upon
5 or measured by net income or profits.

6 Taxes deductible under this act shall be construed to
7 include taxes imposed by any county, school district or
8 municipality of this state."

9 Section 4. Application. The amendments made in
10 sections 1 and 2 apply to taxable years beginning after
11 December 31, 1976. THE AMENDMENT MADE IN SECTION 3 APPLIES
12 TO TAXABLE YEARS ENDING AFTER DECEMBER 31, 1975.

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